

**NOT FOR PUBLICATION**

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

**FILED**

**DEC 12 2005**

CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JULIO CESAR CRUZ-SAGASTE,

Defendant - Appellant.

No. 03-10453

D.C. No. CR-02-01312-1-JMR

MEMORANDUM<sup>\*</sup>

Appeal from the United States District Court  
for the District of Arizona  
John M. Roll, District Judge, Presiding

Submitted December 5, 2005<sup>\*\*</sup>

Before: GOODWIN, W. FLETCHER, and FISHER, Circuit Judges

Julio Cesar Cruz-Sagaste appeals from his jury-trial conviction and 41-month sentence for illegal reentry after deportation in violation of 8 U.S.C. § 1326.

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<sup>\*</sup> This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by 9th Cir. R. 36-3.

<sup>\*\*</sup> This panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

Pursuant to *Anders v. California*, 386 U.S. 738 (1967), counsel for Cruz-Sagaste has filed a brief stating there are no grounds for relief,<sup>1</sup> and a motion to withdraw as counsel of record.

We have conducted an independent review of the record pursuant to *Person v. Ohio*, 488 U.S. 75, 83 (1988). We affirm the conviction. Because appellant was sentenced under the then-mandatory Sentencing Guidelines, and we cannot reliably determine from the record whether the sentence imposed would have been materially different had the district court known that the Guidelines were advisory, we remand to the sentencing court to answer that question, and to proceed pursuant to *United States v. Ameline*, 409 F.3d 1073, 1084 (9th Cir. 2005) (en banc). See *United States v. Moreno-Hernandez*, 419 F.3d 906, 916 (9th Cir. 2005) (extending *Ameline*'s limited remand procedure to cases involving non-constitutional error under *United States v. Booker*, 125 S. Ct. 738 (2005)).

Counsel's motion to withdraw as counsel on appeal is denied.

The conviction is **AFFIRMED**, and the sentence is **REMANDED**.

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<sup>1</sup> Counsel raises the potential issue of ineffective assistance of trial counsel. Ineffective assistance of counsel arguments are ordinarily inappropriate for direct review, however, and should be brought in a collateral proceeding because, as here, the record often lacks a sufficient evidentiary basis. See *United States v. Reyes-Platero*, 224 F.3d 1112, 1116 (9th Cir. 2000).